S.B. CIVIL MISC. APPEAL NO. 723/2001
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Date : 06.03.2006

HON'BLE MR. BHAGWATI PRASAD.J.

Mr. B.S. Rajpurohit for the appellants
Mr. Rajesh Panwar for the respondents.

Heard.

In these appeals, the Insurance company has raised the question regarding the validity of the driving license with the driver. The question of the negligence etc were not raised in these appeals. The only question raised was about the license, regarding which the tribunal has given its finding in Issue no.3. The Insurance company challenging the license had produced witnesses, one of them being NAW/1 Dr. Anil Chouhan. Dr. Anil Chouhan in his statement has stated that " लाइसेंस फर्जी है या नही इस बारे मे मुझे न तो मुझे व्यक्तिगत जानकारी है तथा न मेने व्यक्तिगत रूप से जांच की हो | Thus this witness has no personal knowledge about the validity or genuineness of the license. This witness has also proved a document Ex.A/2, a report submitted by one Mahindra Kumar. This report has not been believed by the trial court because this witness in his statement has stated that this report has not beensigned by Mahindra Kumar in his presence and he only says so that it is signed by Mahindra Kumar from his knowledge. Therefore, the finding of the tribunal that this report is of Mahindra Kumar doubts the genuineness of the license and rightly not believed by the Tribunal. To dispute the genuineness of the

license, another witnesses was relied upon by the Insurance company i.e NAW/2 NareshKumar, a clerk of DTO office. He brought the records of 1991 and submitted that license No. 4813/99 is a license issued in the name of Raghuraj Singh. When questioned about 1988, he submitted that since, the record of 1988 was not summoned, therefore, he has not brought the record. The evidence of NAW/2 Naresh Kumar is also not the complete answer to the question whether the license was forged or not because he in his statement has stated that license Ex.3 is being examined for the first time. This license was never produced before him in his office. If the license was forged, first requirement was that it should have been presented before the DTO for examination and then an opinion should have been framed after comparing the license with the record of DTO office. Having not done so, it cannot be said that the license as deposed is forged. That being the position, the evidence as produced was not sufficient and as such, has rightly been held by the Tribunal that the evidence relied upon by the Insurance company to hold that the license was not a correct license has not been established properly.

Learned counsel for the respondents urged that the Insurance company has not pleaded that the owner of the vehicle had knowledge that the license holder was a person who was not holding the valid license and forgery of the license was within the knowledge of the owner of the vehicle, the person who got the insurance done. That being the position, that burden has also not been discharged by the Insurance company. In that

view of the matter, the findings given out by the tribunal are not considered to be without material on record. They are based on appreciation of evidence.

No case for interference is made out. The appeals having no force are hereby dismissed.

(BHAGWATI PRASAD), J.

bjsh